

Texas Automobile Dealers Association

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April 22, 2013

Director Whitney Brewster
Executive Director
Texas Motor Vehicle Division
4000 Jackson Avenue
Austin, Texas 78731

Re: 43 TAC § 215.4 Request for Formal Opinion

Dear Director Brewster:

In accordance with 43 TAC § 215.4 and on behalf of the Texas Automobile Dealers Association (TADA), I offer this request for a formal opinion regarding clarification of protest rights for a licensed and franchised engine, transmission, or rear axle dealer.

As required by the board's rule, I am not aware that the subject matter of this request is either under investigation or is the subject of a current proceeding by the Board or any other governmental agency. In addition, an opinion from the Board on this narrow request should not require extensive investigation, research, or collateral inquiry.¹

¹43 TAC § 215.4. **Formal Opinions**

(a) General. Any person may request a formal opinion from the Board on any matter within the jurisdiction of Occupations Code, Chapter 2301, or Transportation Code, Chapters 503 and 1000 through 1005. It is the policy of the Board to consider requests for formal opinions and, where practicable, to inform the requesting party of the Board's views; provided, however, that a request will be considered inappropriate for a formal opinion where the request involves a matter which is under investigation or is the subject of a current proceeding by the Board or another governmental agency, or where the request is such that an informed opinion thereon can be given only after extensive investigation, research, or collateral inquiry.



Engine, Transmission and Rear Axle Dealer's New Point and Relocation Protest Rights

The issue presented in this request is whether a franchised and licensed dealer who is an engine, transmission, or rear axle dealer has new point and relocation protest rights under Subchapter N, Chapter 2301, Occupations Code.

In general, a franchised dealer may protest the establishment or relocation of a dealership if the person filing the protest is a franchised dealer of the same line-make whose dealership is located in the same county as the proposed dealership or within a 15-mile radius of the proposed dealership.²

²TEXAS OCCUPATIONS CODE § 2301.652. **Denial of License Application: Dealership**

(b) Except as provided by Subsection (c) and Section 2301.6521 and 2301.6522, a person has standing under this section to protest an application to establish or relocate a dealership if the person filing the protest is a franchised dealer of the same line-make whose dealership is located:

- (1) in the county in which the proposed dealership is to be located; or
- (2) within a 15-mile radius of the proposed dealership.

(c) A franchised dealer may not protest an application to relocate a dealership under this section if the proposed relocation site is not:

- (1) more than two miles from the site where the dealership is currently located; or
- (2) closer to the franchised dealer than the site from which the dealership is being relocated.

TEXAS OCCUPATIONS CODE § 2301.6521. **Right to Protest; Certain Relocations**

(a) In this section, "affected county" means:

- (1) a county with a population of one million or more; or
- (2) a county with a population of 500,000 or more but less than one million that is adjacent to a county with a population of one million or more.

(b) Notwithstanding any other provision of this chapter and except as provided by Subsection (d), a franchised dealer may protest an application to relocate a dealership from a location in an affected county to a location within the same affected county or an adjacent affected county only if the dealer is:

- (1) a dealer of the same line-make as the relocating dealership and is in the affected county where the proposed dealership is being relocated and is nearest to the proposed relocation site, if no dealership of the same line-make as the relocating dealership is located within 15 miles of the proposed relocation site; or
- (2) a dealer of the same line-make as the relocating dealership whose dealership location is within 15 miles of the proposed relocation site.

(c) If more than one dealership location is an equal distance from the proposed relocation site and each dealer and dealership location satisfies the requirements of Subsection

(b)(1), each dealer may protest the relocation under Subsection (b)(1).

(d) A dealer may not protest an application to relocate a dealership under this section if

Although the statute regarding protest rights allows standing to a franchised dealer of the same line-make within a 15-mile radius or the same county of the proposed dealership, with exceptions, there is no statutory definition of “line-make.”³ If that presents a hiatus in the law, it is

the proposed relocation site is two miles or less from the dealership’s current location.

TEXAS OCCUPATIONS CODE § 2301.6522. **Right to Protest: Economically Impaired Dealer**

(a) In this section, “economically impaired dealer means a franchised dealer whose profitability has been or is reasonably expected to be, substantially reduced at the dealer’s current location, with no reasonable expectation of substantial improvement at that location due to:

- (1) a natural disaster;
- (2) the exercise of eminent domain authority with respect to the dealership; or
- (3) the sale of all or part of the dealership to a governmental entity under threat of the exercise of eminent domain authority.

(b) Notwithstanding any other provision of this chapter and except as provided by Subsections (c) and (d), a dealer may not protest the relocation of an economically impaired dealer if:

- (1) the relocation is reasonably expected to be completed before the first anniversary of the date of the event described by Subsection (a); and
- (2) the proposed relocation site is two miles or less from the economically impaired dealer’s current location.

(c) A dealer of the same line-make as an economically impaired dealer whose dealership is nearest to the proposed relocation site of the economically impaired dealer may protest the relocation if the proposed relocation site is more than two miles closer to the protesting dealer’s dealership than the site of the economically impaired dealer’s current location.

(d) If more than one dealership location is an equal distance from the proposed relocation site and each dealer and dealership location satisfies the requirements of Subsection (c), each dealer may protest the relocation under Subsection (c).

³A definition of “line-make” is not necessary for the Board’s determination of this request. A decision regarding “line-make” is Docket No. 99-0023 LIC, *Autobahn Imports, Inc. d/b/a Autobahn Motorcars and Motor Vehicle Division Enforcement Section v. BMW of North America, Inc.*, in which the Board found that BMW’s refusal to distribute the X5 under its existing franchise agreement and BMW’s refusal to offer to all franchised BMW dealers all models manufactured for the **BMW line-make**, was a violation of TEX. REV. CIV. STAT. ANN. art. 4413(36) § 5.02(b)(26) [*see below*]. The Board also determined that it is reasonable to determine that the **X5 is part of the existing BMW line-make**. (Emphasis added) (*See Exhibit 1*).

not relevant to this discussion and request.

A “franchised dealer” operates under a manufacturer’s or distributor’s motor vehicle franchise, “holds a general distinguishing number and a franchised motor vehicle dealer’s license issued by the board, and is engaged in the business of buying, selling, or exchanging new motor vehicles and servicing or repairing motor vehicles under a manufacturer’s warranty at an established and permanent place of business under a franchise in effect with a manufacturer or distributor.”⁴

The definition of “franchise” references a franchisee’s right to sell and service “new motor vehicles”⁵ and a “motor vehicle” includes an engine, transmission, or rear axle, regardless of whether attached to a vehicle chassis, manufactured for installation in a vehicle that has: (i) the transport of a person or persons, or property, on a public highway as its primary purpose; and (ii) a gross vehicle weight rating of more than 16,000 pounds.”⁶

Engine and transmission manufacturers include Caterpillar, Detroit Diesel, Cummins, MaxxForce, Volvo, Mack, PACCAR MX, Allison, and Detroit Transmissions; however, this list is not intended to be a complete listing of all engine, transmission, or rear axle manufacturers or distributors licensed by the State.

Division Enforcement Section v. BMW of North America, Inc., § 5.02(b)(26) stated: “it is unlawful for any manufacturer, distributor, or representative to fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make, or require a dealer to pay any extra fee, purchase unreasonable advertising displays or other materials, or remodel, renovate, or recondition the dealer’s existing facilities as a prerequisite to receiving a model or series of vehicles.”

⁴*Id.* at § 2301.002(16).

⁵*Id.* at § 2301.002(15): “Franchise” means one or more contracts between a franchised dealer as franchisee and a manufacturer or distributor as franchisor, including a written communication from a franchisor to a franchisee in which a duty is imposed on the franchisee, under which:

(A) the franchisee is granted the right to sell and service new motor vehicles manufactured or distributed by the franchisor or only to service motor vehicles under the contract and a manufacturer’s warranty;

(Emphasis added).

⁶*Id.* at § 2301.002(23).

Formal Opinion Request

A franchised dealer has a statutory right to protest the establishment or relocation of a dealership under statutorily defined circumstances and a “dealership” is the physical premises and business facilities on which a franchised dealer operates the dealer’s business, including the sale and repair of motor vehicles. As an engine, transmission, and rear axle is a motor vehicle, regardless of whether attached to a vehicle chassis, if manufactured for installation on a vehicle that has the transport of a person or persons or property, on a public highway as its primary purpose and has a gross vehicle weight rating of more than 16,000 pounds, does a franchised and licensed dealer of an engine, transmission, or rear axle have protest rights under Subchapter N, Chapter 2301, Occupations Code?

TADA respectfully requests that the Board determine that any licensed and franchised motor vehicle dealer, including an engine, transmission, or rear axle dealer, has standing to file a protest regarding the establishment of a new point or a relocation of a dealership under Subchapter N, Chapter 2301, Occupations Code.

An engine, transmission, or rear axle is a motor vehicle if manufactured for installation in a vehicle that has the transport of a person or persons, or property, on a public highway as its primary purpose and has a gross vehicle weight (GVW) rating of more than 16,000 pounds.⁷

Dealers of engines, transmissions, or rear axles installed on vehicles over 16,000 pounds that transport persons or property are licensed by the Board. Attached is a redacted sample of a license issued by the Board showing a dealer who is franchised and licensed to sell Detroit Diesel engines, Caterpillar engines, and Cummins Diesel engines. (See Exhibit 2)

In addition, attached are representative franchise agreements for a Cummins Diesel engine dealer (Exhibit 3) and an Allison transmission franchise agreement. (Exhibit 4).

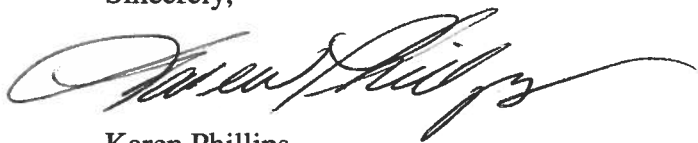
The standing requirements are met under § 2301.652 if an engine, transmission, or rear axle dealer applies to establish a dealership or to relocate a dealership within the same county or within a 15-mile radius of the same line-make, unless the dealer falls within one of the statutory exceptions regarding protest rights.

TADA respectfully requests the Board to find that an engine, transmission, or rear axle licensed and franchised dealer may protest a new point or relocation of a dealership of the same line-make under Subchapter N, Chapter 2301, Occupations Code.

⁷*Id.*

If I may provide any additional information or respond to any question, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Phillips", with a long, sweeping horizontal flourish extending to the right.

Karen Phillips
General Counsel/EVP

c: Bill Harbeson

EXHIBIT 1

**MOTOR VEHICLE BOARD
TEXAS DEPARTMENT OF TRANSPORTATION**

**AUTOBAHN IMPORTS, INC.
dba AUTOBAHN MOTORCARS,
Complainant,**

and

**MOTOR VEHICLE DIVISION
ENFORCEMENT SECTION,
Intervenor.**

v.

BMW OF NORTH AMERICA, INC.
Respondent

DOCKET NO. 99-0023 LIC

FINAL ORDER

The Motor Vehicle Board of the Texas Department of Transportation, having duly considered the Proposal for Decision of the Administrative Law Judge, including the findings of fact, conclusions of law, and recommendations contained therein, and the Board members having unanimously voted to reject the Proposal for Decision (Barnes, Dillard, Leonard, Pagan and Jackson) does hereby enter its Final Order in this proceeding as follows:

IT IS ORDERED:

- I. That the Proposal for Decision filed in this proceeding, including the Administrative Law Judge's opinion, findings of fact, conclusions of law, and recommended action, is rejected by the Board;
- II. That the following Findings of Fact and Conclusions of Law be adopted:

Findings of Fact

1. BMW of North America, L.L.C. (BMW) is a licensed distributor of BMW automobiles and motorcycles in the State of Texas.
2. Autobahn Imports, Inc. dba Autobahn Motorcars, is a licensed franchise dealer for BMW vehicles, located at 2828 White Settlement Road, Fort Worth, Texas.
3. Autobahn holds a contractual franchise agreement with BMW that authorizes Autobahn to sell BMW passenger cars.

4. The existing franchise agreement does not require dealerships to participate in BMW's Certified Pre-Owned Program.
5. Almost all vehicles covered by the Certified Pre-Owned Program are passenger cars.
6. BMW began distributing the X5 Sport Activity Vehicle in 1999, using a new franchise agreement specifically for this vehicle. Only existing BMW franchise holders were authorized to receive this particular vehicle.
7. The X5 is capable of performing on roads that other BMW's cannot.
8. The X5 is not marketed as a utility vehicle, for commercial or industrial uses. It is advertised as a luxury automobile that can be used for many more recreational activities than a conventional luxury vehicle.
9. The X5 is marked with the same BMW roundel and the same kidney-shaped grill as all other BMW's.
10. The X5 is not advertised or marketed for commercial fleet sales.
11. The Texas Department of Transportation's Vehicle Titles and Registration Division (hereinafter VTR) classifies the X5 as an "optional" vehicle for purposes of registration. That is, purchasers can choose on SUV's, including the X5, to register them as either passenger cars or trucks.
12. VTR makes a distinction between vehicles used to carry cargo - trucks, and vehicles used to carry passengers - cars. Any vehicle with an open cargo bed is classified as a truck. This distinction recognized that cargo vehicles were used more often for utility and commercial purposes.
13. The X5 can be classified under Texas practice as a passenger vehicle, and therefore can be distributed under the existing franchise agreement.
14. There is no definition of line-make in Texas law. Nevertheless, line-make is an essential designation under sections of the Texas Motor Vehicle Commission Code.
15. Many manufacturers distribute passenger cars and light trucks under separate franchise agreements. Many others distribute passenger cars and light trucks under the same franchise agreements. There is no uniform practice on this point in the industry.
16. The distinction between light trucks and passenger cars acknowledges an original difference in use between utility vehicles and private transportation.
17. The X5 is designed and marketed as personal recreational transportation.

18. BMW uses the same management, manufacturing, and marketing personnel for the X5 as for its other models.
19. BMW only offers the SAV agreement – the franchise agreement under which the company currently distributes the X5 – to current BMW franchised dealers.
20. It is reasonable to determine that the X5 is a vehicle designed to carry passengers and therefore a passenger car under the terms of the existing franchise agreement.
21. It is reasonable to determine that the X5 is part of the existing BMW line-make.

Conclusions of Law

1. By refusing to distribute the X5 under the existing franchise agreement, the Respondent refused to offer to all franchised BMW dealers all models manufactured for the BMW line-make, in violation of TEX. REV. CIV. STAT. ANN. art. 4413(36) § 5.02(b)(26).
2. By conditioning distribution of the X5 on acceptance of a new franchise agreement, Respondent has engaged in unreasonable discrimination among its franchised dealers, in violation of TEX. REV. CIV. STAT. ANN. art. 4413(36) § 5.02(b)(21); and

- III. That Respondent BMW of North America, Inc., a licensed distributor of BMW motor vehicles, may not implement a separate franchise agreement for its Sports Activity Vehicles.

Date: July 19, 2001



Bob Barnes, Chairman
Motor Vehicle Board
Texas Department of Transportation

ATTESTED:



Brett Bray, Director
Motor Vehicle Division
Texas Department of Transportation

EXHIBIT 2



Texas Department
of Motor Vehicles
MOTOR VEHICLE DIVISION

FRANCHISED MOTOR VEHICLE DEALER

FRANCHISE NO: [REDACTED]

GENERAL DISTINGUISHING NO: [REDACTED]

Motor Vehicle Dealer

EXPIRES: 09/30/2014

PHYSICAL LOCATION:

[REDACTED] TX [REDACTED]

THIS DEALERSHIP IS LICENSED TO ONLY SELL THE FOLLOWING LINE(S) OF NEW MOTOR VEHICLES:
DETROIT DIESEL-EN, CATERPILLAR-EN, AMERICAN LAFRANCE-IT, CUMMINS DIESEL ENGINES-EN, FREIGHTLINER-MT, FREIGHTLINER-HT
ADDITIONAL LOCATION(S): For used vehicle sales only

HAVING SATISFIED THE APPLICABLE REQUIREMENTS OF CHAPTER 2301 OF THE TEXAS OCCUPATIONS CODE, CHAPTER 503 OF THE TEXAS
TRANSPORTATION CODE, AND THE RULES OF THE BOARD, THE PERSON NAMED ABOVE IS HEREBY LICENSED WITH THE TEXAS
DEPARTMENT OF MOTOR VEHICLES, MOTOR VEHICLE DIVISION.

Bill Harbeson

Bill Harbeson, Interim Director
Texas Department of Motor Vehicles
Motor Vehicle Division

WARNING: PENAL CODE SECTION 37.10, PROVIDES THAT TAMPERING WITH A GOVERNMENTAL RECORD IS AN OFFENSE
PUNISHABLE AS A SECOND-DEGREE FELONY.

Control No. [REDACTED]

EXHIBIT 3

**CUMMINS SOUTHERN PLAINS, LLC
DEALERSHIP AGREEMENT**

This Agreement is entered into this 30th day of December, 2011, by and between Cummins Southern Plains, LLC (hereinafter, the "Distributor"), a Texas limited liability company whose mailing address is 600 North Watson Road, Arlington, Texas 76011 and [REDACTED]. (hereinafter the "Dealer"), a Texas [REDACTED] whose mailing address is [REDACTED], Texas [REDACTED]

PREAMBLE

- A. The Distributor is authorized by Cummins Inc. to promote, sell and service Cummins Products within a designated territory subject to the terms and conditions set forth in its agreement with Cummins.
- B. Dealer's Authorized Locations (as defined below) are located in Distributor's territory and it desires to sell and/or service certain "Cummins Products" (as defined below) from those locations subject to the policies and procedures adopted by Cummins Inc. and/or the Distributor and made available to Dealer from time to time.
- C. The purpose of this Agreement (including any schedules and exhibits attached) is to set forth the respective rights and obligations of the Distributor and the Dealer.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Definitions.

As used herein, the term

- 1.1. "Authorized Location(s)" shall mean the outlets located at the addresses listed in the attached Schedule A.
- 1.2. "Cummins" shall mean Cummins Inc.
- 1.3. "Cummins Product(s)" shall mean those genuine engines and/or engine parts (including ReCon engines and parts) marketed under the name "Cummins" distributed by Distributor to Dealer in accordance with Dealer's then current certification level(s) contained in Schedule B.
- 1.4. "Standard Terms" shall mean Distributor's Standard Terms and Conditions of Sale, as revised from time to time by Distributor upon notice to Dealer. A copy of Distributor's Standard Terms and Conditions currently in effect is attached hereto as Exhibit 1.

2. Appointment and Authority of Dealer.

- 2.1. Appointment. Subject to the rights and obligations set forth in this Agreement, Distributor hereby appoints Dealer as a non-exclusive dealer for the Cummins Products in accordance with its certification level(s) more particularly described in Schedule B. Dealer is prohibited from offering or reselling Cummins Products (a) from any location other than Authorized Location(s), and (b) in a manner inconsistent with Cummins' policies and procedures in effect from time to time.
- 2.2. Authority. Subject to the terms and conditions of this Agreement, Dealer is authorized to sell any Cummins Products purchased from Distributor in such manner, at such prices and upon such

terms as Dealer shall determine. Dealer is an independent contractor, not an agent or employee of Distributor or Cummins. Dealer is not authorized to assume or create any obligation or responsibility, including but not limited to obligations based on warranties or guarantees or other contractual obligations, on behalf or in the name of Distributor or Cummins. Dealer shall not misrepresent its status or authority, and shall be solely responsible for all of its own expenses incurred in connection with the performance of its responsibilities under this Agreement, and for all compensation to and the conduct of its employees.

2.3. Principal Manager and Owner. Consistent with the disclosures by Dealer set forth in Schedule C, Dealer acknowledges and agrees that Distributor is entering into this Agreement based on the ability of the Dealer's designated Principal Manager to manage the business of the Dealer and the major financial interest that the Dealer's designated Principal Owner has in the Dealer, and upon the understanding that Principal Owner will maintain its financial interest in the Dealer and that Principal Manager will continue to manage the business of Dealer.

3. Sale of Cummins Product to Dealer.

3.1. Pricing. Prices to Dealer for each order shall be the Distributor's current prices, which are subject to change at any time without advance notice. Notwithstanding the previous sentence, Distributor shall make reasonable commercial efforts to provide Dealer fifteen (15) days advance notice of quarterly and annual price changes.

3.2. Standard Terms. All Dealer orders shall be subject to the Standard Terms. The Standard Terms, as supplemented by prices established pursuant to section 3.1 above and by delivery dates and product quantities agreed upon in each case, shall constitute the entire agreement between the parties with respect to sales of products by Distributor to Dealer; no additional or different terms set forth in Dealer's purchase order, acknowledgement or other forms or correspondence shall govern any such sales of products. Dealer shall comply with all such Standard Terms; and any breach thereof shall also constitute a breach of this Agreement.

3.3. Right of Refusal. Distributor shall make a good faith attempt to fulfill all orders received from Dealers, provided that in certain instances Distributor may refuse to accept any order by Dealer which Distributor determines in good faith to be detrimental to all its customers best interests.

3.4. Right to Discontinue Production. Dealer acknowledges that pursuant to Distributor's contract with Cummins, Cummins reserves the right at any time and without notice to discontinue the manufacture or supply of any Cummins Product, with or without substituting another in its place, to make changes in design, and to add improvements to any Cummins Product previously manufactured and delivered. Dealer further acknowledges and agrees that Distributor reserves the same rights in connection with the sale by Distributor to Dealer of Cummins Products under this Agreement and that Distributor shall not be liable to Dealer as a result of any such change.

3.5. International Sales. Dealer acknowledges that Distributor's contract with Cummins restricts Distributor's international sales in order to ensure compliance with United States and foreign laws and regulations restricting exports of products and services to certain nations and organizations. Dealer agrees to notify Distributor of any potential international sale which could involve the purchase of Cummins Products so that Distributor, together with Cummins, can assess if the contemplated sale of Cummins Products can be made without violating applicable export controls. Distributor will use its best efforts at all times to provide a timely response to Dealer to reach a conclusion as to whether Cummins Products can be exported by Dealer.

4. Rights and Obligations of Dealer.

4.1. Sales Efforts. Dealer agrees to use its best efforts during the term of this Agreement to sell and actively promote the sale of the Cummins Products in all lawful ways and to the maximum extent possible.

4.2. Sales Force. Dealer agrees to maintain a sales force of trained persons who will actively solicit the sale and promote the advantages of the Cummins Products.

4.3. Parts and Service Staff. All Cummins service work performed by Dealer shall be done in a good and workmanlike manner, in accordance with Cummins policies and procedures and using only genuine Cummins Products, except as contemplated by Section 5.4 below. Dealer agrees to maintain qualified parts and service personnel trained in the proper maintenance, diagnostics and repair of Cummins Products, and the stocking and sale of Cummins Products that is appropriate for Dealer's designated service level. The expense for such training shall be borne by Dealer.

4.3.1. Dealer agrees to maintain the competency level of its personnel as required pursuant to Cummins certification procedures adopted from time to time. The intention of this requirement is that Dealer shall have a sufficient number of trained service personnel on staff so that only service personnel trained on Cummins Products perform repairs on Cummins Products.

4.3.2. Dealer agrees to provide at least one qualified parts employee trained in the use of parts books/literature, information systems, and ordering and inventory control procedures as required pursuant to Cummins certification procedures. One or more such parts employees shall participate in training provided by Cummins or Distributor, as required by Distributor.

4.4. Inventory - Minimum Order, Minimum Quantity

4.4.1. If Dealer is a newly authorized Dealer or is adding new Cummins Products to its line, Dealer agrees to purchase an initial complement of new Cummins Products, based on Cummins Product certification, within thirty (30) days of executing this Agreement.

4.4.2. Except as otherwise authorized by Distributor in writing, Dealer shall maintain on hand no less than a forty-five (45) day supply of genuine Cummins parts and accessories, consistent with its volume of sales in the most recent twelve (12) month period. Cummins intention is that all Dealers carry an appropriate level of inventory so as not to delay the performance of a predictable service event.

4.4.3. A new Dealer may, within *twelve (12)* months from the original date of execution of this Agreement, return any new, unused and undamaged Cummins new and ReCon parts which were purchased from Distributor. This opportunity is intended to give the new Dealer one (1) opportunity to adjust its inventory based on sales experience. Cummins new and ReCon parts for return in accordance with this section shall be credited at Distributor's then current return policy for Cummins Products. Shipping and transportation will be at the expense of Dealer. Any Cummins new and ReCon parts returned under this Section shall not be included in the total annual purchases required by Dealer in Section 4.4.2 above. The foregoing sentences of this Section 4.4.3 shall not apply after the initial twelve (12) month term of this Agreement and, for clarity, in this Section 4.4.3, the term "new Dealer" does not apply to a previously certified Dealer that undergoes a change of Principal Manager or Principal Owner any time following the initial twelve (12) month term. In addition,

Distributor may from time to time offer a return program of excess and obsolete Cummins new and ReCon parts consistent with such a program offered by Cummins.

4.5. **Equipment.** Dealer shall, at its sole cost and expense, provide and have available for use at each Authorized Location the special tools, equipment and software required to service the Cummins Products. Such tools and equipment shall include as a minimum, the tools and equipment required by Cummins certification procedures, and which Dealer shall maintain in good and operational condition.

4.6. **Facilities and Signage.**

4.6.1. Dealer shall maintain facilities for sale and/or service of Cummins Products in a neat, clean and orderly condition consistent with the high standards and level of expertise that all customers, Cummins and Distributor expect of a Cummins dealer.

4.6.2. Subject always to the provisions of Section 6, all signage referring to the trade name or trademarks of Cummins, including any reference to Dealer's status as a Cummins dealer, shall be kept neat and clean at all times, shall be fully visible and free of trees, foliage and other signage, shall be arranged in a dominant or equal position to the signage of any Cummins competitor.

4.6.3. In accordance with Cummins current certification requirements :

- **"Full Service Dealer(s)"** shall have an illuminated external sign of four feet by four feet in size;
- **"Repair Dealer(s)"** shall have an illuminated external sign of two feet by two feet in size;
- **"Maintenance Dealer(s)"** shall have a non-illuminated external sign of two feet by two feet;
- **"Parts Dealer(s)"** shall have a non-illuminated sign of two feet by two feet in size; and
- **"Service Associate(s)"** shall have a non-illuminated sign of two feet by two feet in size except, in all cases, where local ordinance prohibits.

4.7. **Dealer Advertising.** All advertising of Cummins Products by Dealer, whether in paper or electronic form conveyed through catalogs, mail pieces, newspapers, periodical publications, radio, television, internet websites, or social media sites, shall be consistent with Distributor's then current policy published in its dealer manual. Dealer shall not publish or produce or cause to be published or produced any form of advertising or identification of Cummins Products likely to mislead or deceive the public (including without limitation as to its status as an independent dealer and not agent) or to injure, diminish or adversely affect the reputation or prestige of Cummins Products, Distributor or Cummins or the brand image of Cummins and Cummins Products. Upon notice from Distributor or Cummins, Dealer shall promptly discontinue any advertising which Distributor or Cummins considers to be injurious to the reputation or prestige of Cummins, Cummins Products or Distributor or the brand identification of Cummins and Cummins Products. Distributor or Cummins may from time to time make available to Dealer signs, brochures, electronic media and images, and other promotional material. Dealer may in its sole discretion, use or not use such materials; provided, however, Dealer shall pay Distributor the stated price for any such materials used by Dealer.

4.8. **Parts and Service Information.** Dealer shall purchase and/or subscribe for up to date parts and service information as required in accordance with Cummins certification requirements from Distributor.

4.9. **Reports.** Dealer shall provide such reports with respect to its activities pursuant to this Agreement as reasonably requested by Distributor or Cummins from time to time.

5. Warranty and Other Service Work.

5.1. Warranty Repair Program. Subject to agreement between Dealer and Distributor and in accordance to the limitations specified in Schedule B, Cummins has established a program applicable to warranty repair under which Dealer may become qualified to perform warranty repairs of Cummins Products, and will be reimbursed for such repairs in accordance with Cummins and Distributor's warranty reimbursement policies (including warranty audit program) in effect from time to time.

5.2. Approval of Repair. Dealer must be certified through Distributor before performing any warranty repairs. Dealer may not commit Distributor or Cummins for any adjustments to the Cummins Product warranty whatsoever in the event of a claim for alleged defective material or workmanship.

5.3. Use of Genuine Cummins Products. All warranty work shall be conducted using genuine Cummins Products. In all non-warranty work, Dealer agrees to promote the sale of genuine Cummins Products and to explain the benefits of their use.

5.4. Use of Non-genuine Parts. In the event non-warranty work is performed with parts other than genuine Cummins Products, Dealer shall so inform the customer in advance, and shall clearly state on the invoice that parts other than genuine Cummins Products are being used and that Cummins does not warrant the parts as follows:

"Parts other than genuine Cummins parts have been utilized in this repair work; and any claims resulting from the use of such parts will not be covered by Cummins Inc. under its warranty."

5.5. Limited Warranty. The warranty provided by Cummins, an affiliate of Cummins or the manufacturer of a product that is not a Cummins Product but that is supplied by Distributor constitutes the sole warranty with respect to the applicable product, except for Distributor's warranty, if any, on those products rebuilt by Distributor. Each Cummins product is warranted by Cummins directly to the end-user of the product, not to Dealer or Distributor. For the avoidance of doubt should Dealer purchase Cummins Products for its own use it will be deemed to be the end-user and have the benefit of the warranty.

5.6. No Alteration of Limited Warranty. No warranty terms may be altered by Dealer without the prior written consent of the party to be charged with the warranty expense. Cummins' and Distributor's sole obligation and Dealer's exclusive right with respect to defective Cummins Products shall be reimbursement for warranty repairs pursuant to Section 5.1 above, if applicable.

5.7. Distributor Rebuilt Products. The provisions of any written warranty provided by Distributor with respect to sale of products which have been rebuilt by Distributor constitute the sole warranty on such products. Distributor's warranty in effect on the date of execution of this Agreement is set forth in Paragraph 8 of Exhibit 1. Distributor reserves the right to eliminate or change any such warranty, effective for products ordered after notice to Dealer.

5.8. Service Work. Dealer shall be responsible for defective workmanship but it is not the intention of Cummins or Distributor that Dealer should be responsible for any defects in material, design, assembly, or manufacture of Products sold to Dealer by Distributor to the extent any such defect

existed at the time of delivery to Dealer and was directly attributable to an act or omission of Cummins.

6. Use of Cummins' Name, Tradenames and Trademarks.

6.1. Limited, Non-exclusive Right to Use Cummins' Name. Subject to those policies and procedures adopted by Cummins from time to time regarding the use of its brand names and trademarks, and provided that the Dealer is in compliance with the terms and conditions of this Agreement, Distributor grants to Dealer a non-exclusive right to advertise and otherwise inform the general public of the fact of its certification level(s) as set forth in Schedule B, including the use of approved means of identification and the name "Cummins," only as necessary to carry out the responsibilities set forth in this Agreement. Dealer shall permit representatives of Cummins and/or Distributor to observe Dealer's activities and to inspect Dealer's facilities at any reasonable time. In the event that Cummins or the Distributor determines, in its sole discretion, that Dealer is not in compliance with the terms of this Agreement or Cummins policies and procedures, then the Dealer shall have 30 days from notification to cure any such breach, if not, either Distributor or Cummins shall have the right to terminate Dealer's right to use Cummins' name upon ten (10) days written notice.

6.2. Effect of Termination of Agreement. In the event of any termination, cancellation or non-renewal of this Agreement, Dealer shall refrain from all further use in his or its business of the name "Cummins" in any manner, including but not limited to the use of Cummins trademarks and/or display signs symbolizing or indicating an association with Cummins or its affiliates or distributors.

6.3. No Rights in Goodwill or Intellectual Property. Whether by exercise of the authority granted in Section 6.1 or otherwise, Dealer shall not acquire any rights to any goodwill, tradename, trademark, copyright, patent, trade secret or other similar property of Cummins, Distributor, or any of their respective affiliates. Dealer acknowledges that Cummins is the exclusive owner of the foregoing rights and, during the term of this Agreement and after its termination, Dealer agrees not to contest or aid in contesting the validity or ownership of any of those rights or take any action whatsoever in derogation of Cummins' or Distributor's ownership of those rights. Dealer agrees that any and all goodwill associated with any proprietary names or marks owned by Cummins, Distributor, or any of their respective affiliates is directly and exclusively for their benefit and is their property.

6.4. Misuse. No name or mark of Cummins, Distributor, or any of their respective affiliates shall be used in a manner that may cause it to become a generic word, causing a loss of its protected status, or in a manner that is likely to cause confusion, mistake, or deception. Dealer acknowledges that Cummins and/or Distributor, in their sole discretion, may take such action or institute such proceedings as it deems necessary to protect Cummins, Distributor or any of their respective affiliates' trademark, trade name, service mark, copyright, patent and other intellectual property rights. Dealer agrees to execute all documents necessary to enable Cummins and Distributor to take the action or institute the proceedings that it desires to protect such rights. Similarly, Dealer shall not use Cummins trade names or trademarks as part of Dealer's trade or business name or in any other way which Distributor and/or Cummins considers misleading or objectionable.

6.5. Prohibition on Transfer. Dealer shall not transfer, sell, assign, sublet or sublicense its rights under this Agreement with respect to Cummins' or its affiliates' trademarks or tradenames.

7. Term and Termination.

7.1. Term. This Agreement is effective upon the date fully executed and shall remain in effect for two (2) years, unless sooner terminated pursuant to any of Sections 7.2, 7.3, 7.4 or 7.5 below.

7.2. Termination at Discretion. Either party may terminate this Agreement at any time, for any or no reason, upon 60 days' prior written notice to the other party.

7.3. Termination by Distributor upon Certain Events. This Agreement may be canceled and terminated by Distributor, without advance notice, in any of the following events:

7.3.1. If Dealer is a partnership, corporation, limited liability company, or other similar entity, and disagreements of any nature arise between members or shareholders of the entity, which Distributor, in its sole discretion, determines places Cummins or its interests at risk.

7.3.2. In the event of the death of the Principal Manager or Principal Owner or, in the sole discretion of Distributor, if either becomes incapacitated. This does not apply if Dealer or its parent company has equity securities which are publicly traded in a recognized securities exchange.

7.3.3. In the event of a change of Principal Manager or Principal Owner. This shall not apply if Dealer or its parent company has equity securities which are publicly traded in a recognized securities exchange.

7.3.4. In the event Dealer, or one of Dealers' owners, becomes insolvent, or the subject of an application for either a voluntary or involuntary declaration of bankruptcy, or if a receiver or trustee is appointed to administer an assignment for the benefit of creditors.

7.3.5. In the event Dealer fails to maintain the quality standards required by Cummins.

7.3.6. In the event Distributor determines that Dealer has conducted business in a manner which violates the law, is dishonest, makes misrepresentations to the public, Distributor or Cummins, or in any way misleads the public, Distributor or Cummins.

7.4. Termination by Distributor for Other Cause. This Agreement may be terminated by Distributor at any time, without further notice, if Dealer is in breach of this Agreement, or other good cause for termination exists, and Dealer fails to cure the breach or cause within 30 days of written notification thereof from Distributor.

7.5. Termination upon Expiration or Termination of Distributor's Agreement with Cummins. If, for any reason, the contract of Distributor with Cummins expires, is cancelled or is terminated, and is not renewed, this Agreement between Distributor and Dealer shall be automatically cancelled or terminated simultaneously with the date of cancellation or termination of the contract between Distributor and Cummins unless Cummins, in its sole discretion, elects to assume this Agreement or appoints another distributor to assume this Agreement.

7.6. Effect of Expiration or Termination.

7.6.1. Neither party shall be entitled to any compensation or reimbursement for inability to recoup any investment made in connection with performance under this Agreement, loss of prospective profits or anticipated sales or other losses occasioned by expiration or termination of this Agreement.

7.6.2. The cancellation, termination, or expiration of this Agreement shall not release Dealer from payment of any sum owed to Distributor for Cummins Products or other goods ordered by Dealer during the term of this Agreement, and delivered to Dealer, whether prior or subsequent thereto.

7.6.3. Any bona fide order or orders which may have been accepted by Distributor prior to expiration, cancellation or termination of this Agreement, shall not in any way be affected by such expiration, cancellation or termination; provided, however, that Distributor may require that Dealer make payment in advance of shipment, or provide other satisfactory payment assurance, as a condition to shipment of any such order.

7.6.4. All outstanding quotations on Cummins Products and/or other goods issued by Distributor to Dealer shall be canceled upon expiration or termination.

7.6.5. In the event this Agreement expires, is canceled, or is terminated, Distributor shall repurchase from Dealer and Dealer agrees to sell to Distributor, all or any part of those Cummins Products that Dealer has in its possession that are new, unused, undamaged, not obsolete, readily saleable and that were purchased by the Dealer from the Distributor during the immediately preceding 12 month period, at the price levels then in effect or at Dealer's cost, whichever is less. All returns are subject to the Distributor parts return policies in effect at the time. In addition, Distributor shall have the option, but shall not be required, to purchase from Dealer and Dealer agrees, in the event of Distributor's exercise of such option, to sell to Distributor, all or any part of the remaining Cummins Products, in possession of Dealer when this Agreement expires, is canceled or is terminated, at the price levels then in effect or at Dealer's cost, whichever is less. Distributor also shall have the option, but shall not be required, to purchase from Dealer and Dealer agrees, in the event of Distributor's exercise of such option, to sell to Distributor, all special Cummins tooling at a negotiated price not to exceed Dealer's cost. Finally, Distributor shall purchase Dealer's Cummins signage at a fair market value price to be agreed by the parties.

7.7. Survival of Section. The provisions of this Section shall survive the termination or expiration of this Agreement.

8. Limitations on Liability, Indemnification and Insurance.

8.1. Other Limitations. **UNDER NO CIRCUMSTANCES SHALL DISTRIBUTOR OR CUMMINS BE RESPONSIBLE FOR ANY LABOR OR OTHER LOSS, COST OR EXPENSE INCURRED BY DEALER INCIDENT TO ANY DEFECT OF ANY NATURE WHATSOEVER IN, OR FAILURE OR DELAY IN DELIVERING, ANY CUMMINS PRODUCTS OR OTHER GOODS, INCLUDING WITHOUT LIMITATION: LOSS OF BUSINESS, GOODWILL OR PROFITS; LOSS OF USE OF EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES; DOWNTIME COSTS; OR ANY OTHER CONSEQUENTIAL OR INCIDENTAL LOSS OR DAMAGE, WHETHER OR NOT FORESEEABLE BY DISTRIBUTOR. NOTWITHSTANDING THE FOREGOING AND CONSISTENT WITH SECTION 5.7, DEALER DOES NOT WAIVE OR RELEASE ANY CLAIM FOR CONTRIBUTION FROM DISTRIBUTOR OR CUMMINS WITH RESPECT TO ANY THIRD PARTY CLAIM ARISING FROM DEFECTS IN MATERIAL, DESIGN, ASSEMBLY, OR MANUFACTURE OF PRODUCTS SOLD TO DEALER BY DISTRIBUTOR.**

8.2. Indemnification. Each party to this Agreement ("Indemnitor") hereby agrees to indemnify, defend, and hold harmless the other party, its officers, directors, managers, employees, members,

shareholders and agents (each an "Indemnitee") from and against any and all third party claims, damages, losses, and liabilities (any and all of which are hereinafter referred to as "Claims") to the extent that such Claims arise out of or are in any way caused by the negligence or willful misconduct of the Indemnitor.

8.3. **Downstream Limitations.** The prices for Cummins Products and other goods sold by Distributor are based upon and in consideration for the foregoing limitations of Distributor's and Cummins liability. Dealer agrees to use its best efforts to incorporate into its agreements with its customers a provision limiting Dealer's, Distributor's and Cummins liability, similar in substance to that set forth above in sections 8.1, 8.2, and 8.3.

8.4. **Dealer Insurance.** Dealer shall maintain and provide to Distributor upon request during the term of this Agreement and for five years thereafter, evidence of insurance in an amount reasonably acceptable to Distributor. Dealer shall or shall cause its insurers to endeavor to provide Distributor at least thirty (30) days notice of cancellation of, or any material changes in agreed coverages.

9. Dealer Warranties and Representations.

9.1. **No Fees and No Association of Dealer's and Cummins' Businesses.** Dealer acknowledges that it has not and will not pay any fee to Distributor or Cummins in connection with this Agreement or any prior agreement, understanding or arrangement between them. Dealer understands and agrees that its rights under this Agreement and the operation of its business are not substantially associated with any trademark, service mark, trade name, logotype, advertising or other commercial symbol designating Cummins, Distributor, or the Cummins Products.

9.2. **Distributor and Cummins are Independent.** Dealer acknowledges that Distributor is independently incorporated or organized with different ownership than Cummins and without the authority to speak for or legally bind Cummins. Dealer understands that Distributor can extend no right or benefit to Dealer except to the extent authorized and empowered by Cummins under the terms of its written Agreement with Distributor.

9.3. **Cummins is a Third-Party Beneficiary.** Dealer understands that, the terms of Section 9.2 notwithstanding, Cummins is intended to be a third-party beneficiary of the provisions of this Agreement that refer to Cummins, and acknowledges that Cummins may enforce such provisions for its own account, independently of Distributor.

9.4. **Notice of Changed Circumstances.** Dealer shall immediately notify Distributor upon the occurrence of any event during the term of this Agreement that would prevent Dealer from reaffirming the representations and warranties in Sections 9.1 and 9.2 above following such event.

10. Miscellaneous.

10.1. **Entire Agreement.** This Agreement (including all schedules, exhibits, policies attached hereto or referred herein) constitutes the entire agreement between Dealer and Distributor, superseding all prior oral or written agreements, policies, understandings, representations, warranties and negotiations, on the subject of the continuing relationship between Dealer and Distributor; and there are no conditions affecting this Agreement which are not expressed herein. Except as otherwise provided herein, this Agreement may be amended only by a writing signed by both parties hereto.

- 10.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws, without reference to principles of conflicts of laws, of the State of Texas.
- 10.3. Compliance. Dealer shall at all times conduct its efforts hereunder in strict accordance with all applicable federal, state, and local laws and regulations (including without limitation the Foreign Corrupt Practices Act of 1977, as amended) and with the highest commercial standards. Dealer shall make no representations, warranties, or guarantees with respect to the Cummins Products that Dealer knows to be false or misleading or that are inconsistent with the information supplied by Distributor or Cummins.
- 10.4. Notice. Notification required or permitted hereby shall be deemed given upon enclosure thereof in an adequately post-paid envelope deposited in a United States mail box or with the United States Postal Service, and addressed to the party to be given notice at the address that party has previously requested, by notice hereunder, that notices be sent or, if no such request has been made, at the address listed for that party in this Agreement.
- 10.5. Assignment. This Agreement may not be assigned by Dealer, whether voluntarily or by operation of law, without the consent of Distributor. This Agreement, or any of Distributor's rights hereunder, may be assigned by Distributor to Cummins or another distributor of Cummins upon written notice to Dealer.
- 10.6. Confidential Information. Dealer shall not divulge to third parties any confidential information concerning Cummins Products, Cummins or Distributor. Where disclosure of such information is requested or demanded in connection with pending or threatened litigation or by governmental agencies, disclosure shall not be made until Distributor and Cummins have been informed of such request or demand and given a reasonable period of time in which to consent to or oppose such request or demand before the appropriate authorities, as they deem appropriate. This obligation shall apply during and after the term of this Agreement, regardless of the cause of its termination.
- 10.7. Severability. The illegality or unenforceability of any provision of this Agreement shall not compromise the validity and enforceability of any legal and enforceable provisions of this Agreement.
- 10.8. Effect of Titles. The titles assigned to Articles and Sections of this Agreement are for convenient reference only, and shall not constitute a part or affect the interpretation of the text of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written by their undersigned, duly authorized agents.

[REDACTED]
("Dealer")
Signature [REDACTED]
Printed name: [REDACTED]
Title: [REDACTED]
[REDACTED]

Cummins Southern Plains, LLC
("Distributor")

Signature J. David Gillikin
Printed Name: J. David Gillikin
Title: President

EXHIBIT 4

STANDARD PROVISIONS

The following Standard Provisions are part of Allison's Original Equipment Manufacturer (OEM) Dealer Agreement (Form No. AL300 (01/12)).

ARTICLE 1. Management and Ownership

This is a personal services agreement, entered into in reliance on the qualifications of the Principal Owner(s) and Principal Manager(s) identified in the Ownership and Active Management Addendum and on Dealer's assurance that Principal Manager(s) will provide personal services by exercising full managerial authority over Dealer Operations.

ARTICLE 2. Authorized Location

2.1 Location

Dealer will maintain at the location specified in Paragraph SECOND of this Agreement a place of business satisfactory in appearance and adequate in size and layout for Dealer Operations.

Dealer will not establish any additional place of business for the conduct of Dealer Operations without the prior written approval of Distributor. If such approval is granted, it will be reflected by the execution of an additional dealer agreement wherein such other place of business is specified.

2.2 Business Hours

Dealer will maintain its Dealer Operations open to serve customers during all days and hours which are customary in the trade and lawful and necessary to properly service Allison customers.

2.3 Signs

Subject to applicable ordinances and laws, Dealer will at its own expense erect and maintain at the location specified in Paragraph SECOND of this Agreement a standard authorized sign of a type recommended or approved by Distributor and Allison in writing and such other signs as are necessary to advertise properly the Allison Transmission Dealer Operations on a basis mutually satisfactory to Distributor and Dealer.

2.4 Tools and Equipment

Dealer agrees to maintain adequate tools and equipment to enable it to fulfill its obligations under this Agreement, including those tools and items of shop equipment specifically designated in special service tool and equipment lists, essential tool letters, and other applicable bulletins provided by Distributor for each of the Products.

2.5 Inventory

Dealer recognizes that users and prospective users of Products expect Service Dealers to have a reasonable quantity of current Parts in inventory. Dealer agrees to maintain an inventory of Parts adequate to meet the needs of Allison customers.

ARTICLE 3. Sales Responsibilities

3.1 Dealer agrees to ethically, lawfully, aggressively and effectively to: (a) promote the purchase by owners of OEM products equipped with Products, and (b) promote the retail sale of Parts and Products authorized in Paragraph FIRST to users and prospective users in the Dealer's Primary Market Area of North America defined as the United States and its Territories, Canada, Mexico, Central America, Caribbean Islands and Greenland.

Such purchases will significantly benefit Allison, Distributor and Dealer because all such expanded use of Products creates opportunities for the sale of additional Products, Parts and services.

3.2 Dealer agrees to sell Parts only to customers located in the Dealer's Primary Market Area and agrees it will not sell Parts for resale or principal use outside the Primary Market Area. To carry out sales responsibilities Dealer agrees to (a) maintain a force of trained sales personnel considered adequate by Distributor; (b) establish and maintain regular contacts with owners of OEM equipment using Products and with others who influence purchases; and (c) employ effective and ethical sales, advertising and promotion programs and activities.

ARTICLE 4. Service Responsibilities

4.1 Dealer agrees to perform the service obligations of Allison, Allison Distributors and Service Dealers, on Products regardless of origin of purchase. This work will be performed promptly, in a good and workmanlike manner and in accordance with the Service Policy Manual and other publications provided by Distributor or Allison, and in accordance with all applicable laws.

4.2 In the servicing of Automatic or automated-manual transmissions, incorporated in or to be incorporated in or to be incorporated in finished machinery and in all vehicles rated at, or in excess of, eight thousand pounds Gross Combination Weight (8,000 lbs GVW), Dealer shall exclusively service Products or other products marketed or

originally installed by the Nationally Recognized Original Equipment Manufacturer identified in paragraph FIRST of this Agreement unless otherwise agreed in advance in writing by Allison,

4.3 Dealer agrees to employ a force of trained management and service personnel considered adequate by Distributor who meet the standards outlined in the Service Standards Manual.

4.4 Dealer agrees to maintain current applicable service information for use by Dealer personnel and customers as necessary.

4.5 Dealer agrees to not charge customers for Parts and services for which Dealer is reimbursed by Distributor or Allison.

4.6 Dealer shall stock a complete line of Parts and use only Parts in servicing Products unless no Part is available, in which case Dealer may use OEM-branded parts provided by the OEM identified in paragraph FIRST of this Agreement. Dealer shall report all uses of parts other than Parts to Allison on a regular basis.

4.7 Dealer will not represent parts not marketed by Allison as Parts marketed by Allison. Dealer will disclose the use of any part not marketed by Allison on customer invoices and repair orders, and will further disclose that such part is not warranted by Allison. The disclosure must be conspicuous so as to ensure the customer is able to make an informed decision and in language and format as prescribed by Allison.

4.8 Dealer will provide upon request copies of applicable warranties to owners and prospective owners of Products and explain the provisions of each warranty. Additionally, proper operating instructions and requirements for Products are to be explained where required.

4.9 Dealer will perform, in accordance with the Service Policy Manual, (a) warranty repairs on all Products and Parts qualifying for such repairs, (b) special policy adjustments approved by Allison, and (c) campaign inspections and corrections that are directed by Allison on Products and Parts. In performing such work Dealer will use only Parts. Dealer will provide to each customer a copy of the repair order for such work.

4.10 Distributor will pay Dealer for the replacement of Parts or will provide Dealer with the Parts required and pay for labor in accordance with the applicable provisions of the Service Policy Manual for all warranty repairs, special policy adjustments and campaign inspections or corrections performed directly by Dealer in its conduct of Dealer Operations.

4.11 In some situations, Dealer may offer enhanced customer service by providing and maintaining properly equipped service vehicles or other means of providing satisfactory customer field service. Service units are to be domiciled at, operate from, and return to Dealer premises daily. Exceptions require the prior written approval of Distributor and Allison.

ARTICLE 5. Sales to Dealer

5.1 Orders

Dealer will submit orders for Parts to Distributor in accordance with ordering procedures furnished by Distributor. Dealer may purchase Parts directly from Allison if authorized by Allison. Dealer's orders are not binding until accepted by Distributor and may be cancelled by Dealer until that time. After Distributor's acceptance of an order, Dealer may not modify or cancel such order without the written consent of Distributor. Distributor may establish a reasonable cancellation charge to be paid by Dealer.

Distributor will not be liable for any delay or failures to deliver Parts where caused, in whole or part by:

- (a) any strike or labor trouble affecting operations of Distributor, Allison, Affiliated Companies or their suppliers;
- (b) any shortage or curtailment of utilities, materials, transportation, or labor or any shortage or damage to the facilities of Distributor, Allison, Affiliated Companies or their suppliers;
- (c) any act of government, including the enactment of laws or regulations or issuance of judicial or administrative injunctions or orders;
- (d) any curtailment or discontinuance of production by Allison, Affiliated Companies or their suppliers; or
- (e) any cause beyond the control of Distributor, Allison, Affiliated Companies or their suppliers.

If any Parts ordered by Dealer are delivered or returned because of Dealer's delay or failure to accept delivery, Dealer will pay any additional costs incurred by Distributor as a result of such diversion or return.

5.2 Warranties on Products or Parts

Allison warrants new Products and Parts as set forth in documents containing those warranties that Allison provides with such Products and Parts as set forth in the Service Policy Manual.

EXCEPT AS OTHERWISE PROVIDED BY LAW, THE WRITTEN ALLISON WARRANTIES ARE THE ONLY WARRANTIES APPLICABLE TO NEW PRODUCTS AND PARTS. WITH RESPECT TO DEALER, SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES OR LIABILITIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY LIABILITY FOR COMMERCIAL LOSSES BASED UPON NEGLIGENCE OR MANUFACTURER'S STRICT LIABILITY. EXCEPT AS MAY BE PROVIDED UNDER AN ESTABLISHED ALLISON PROGRAM OR PROCEDURE, ALLISON NEITHER ASSUMES NOR AUTHORIZES ANYONE TO ASSUME FOR IT ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH PRODUCTS AND PARTS, AND

ALLISON'S MAXIMUM LIABILITY IS TO REPAIR OR REPLACE THE PRODUCT OR PART.

5.3 Prices and Terms of Sale

Prices, charges, discounts, allowances and other terms of sale applicable to purchases of Parts shall be those established by Distributor in pricing publications in effect at time of shipment to Dealer. Distributor has the right to change the prices, charges, discounts, allowances and other terms of sale for Parts at any time. Any such change shall apply to Parts ordered by, but not shipped to Dealer, at the time such change is made effective by Distributor.

5.4 Shipments

Unless otherwise agreed, Distributor will arrange for shipment services on Dealer's behalf and account. Parts will be shipped to Dealer's place of business. Distributor will not be liable for any delays, losses or damages in shipment.

5.5 Change or Discontinuance of Products or Parts

Allison may discontinue any Products or Parts or lines of Products or Parts or change the design or specification of any Products or Parts at any time without notice and without incurring any obligation to Dealer.

Allison may install any equipment or accessories or incorporate any design features required by law on any Products or Parts ordered by Dealer, whether or not such items or features are included in Dealer's order.

5.6 Government Regulations

Dealer and Distributor will provide each other with such information and assistance as reasonably requested to facilitate compliance with government laws, regulations and orders relating to Products and Parts. Dealer will be responsible for complying with applicable laws, regulations and orders.

Allison and its suppliers are not required to change their materials, designs or production processes in any way to meet such regulations, but Allison has agreed with Distributor to endeavor to achieve Product and Part conformance where, in Allison's sole judgment, such conformance is practical and is economically justified.

ARTICLE 6. Training

Distributor will conduct general and specialized sales, service and Parts training programs and provide update sessions to Dealer personnel from time to time. Dealer will have its personnel attend such courses in order to develop and maintain qualified personnel to effectively fulfill Dealer's responsibilities under this Agreement. Distributor will not be responsible for any compensation payable to Dealer personnel while attending such courses or any related travel and living expenses.

In addition, Distributor will be available to counsel and advise Dealer upon request on matters relating to Dealer Operations. Distributor shall also make available to Dealer

(a) a Service Policy Manual, and service bulletins as necessary on particular subjects, to assist Dealer in properly servicing Products and Parts; and (b) other manuals, bulletins and letters containing information as deemed necessary or desirable by Allison or Distributor to assist Dealer to properly conduct its Dealer Operations.

Dealer shall employ personnel trained in claims preparation and submission. Dealer shall employ sales personnel trained regarding the essential sales features and application guidelines of Products used in the products of the OEM(s) named in Paragraph FIRST.

ARTICLE 7. Review of Dealer's Performance

Periodically, Distributor will review with Dealer various aspects of Dealer's sales and service performance based upon, but not limited to, the following factors:

7.1 Sales

(a) The manner in which Dealer has conducted sales operations including advertising, sales promotion, and treatment of customers.

(b) Sales resulting from Dealer's efforts to promote purchases by customers and users of OEM products equipped with Products.

(c) The manner in which Dealer has submitted orders for Parts to Distributor.

7.2 Service

(a) Customer satisfaction by Product users.

(b) The manner and efficiency with which Dealer conducts service operations.

(c) The adequacy of facilities, tools and equipment, and personnel.

7.3 Training

The effectiveness of Dealer in providing training for its employees and participating in Distributor provided training.

ARTICLE 8. Accounts and Records

8.1 Maintaining and Reporting Data

Dealer agrees to maintain complete and accurate sales, service, Parts, training and other appropriate records designated by Distributor and Allison in a form satisfactory to Distributor or Allison, as the case may be, for a period of two years.

8.2 Examination of Accounts and Records

Dealer agrees to permit any designated representative of Distributor or Allison to examine, audit, reproduce and take copies of any Dealer accounts and records required under this Agreement.

8.3 Confidentiality of Dealer Data

The parties agree not to furnish any personal or financial data, customer information or other information or data submitted to one party by the other party to any non-affiliated entity unless authorized in writing by the furnishing party, required by law, or pertinent to judicial or administrative proceedings.

ARTICLE 9. Reassignment or Conversion of Dealer

Allison's primary purpose in establishing Distributors and authorizing Distributors to appoint Dealers is to serve end users of Allison Products. Certain business conditions may require changes to Distributor's Area of Responsibility to better serve end users of Allison Products. In the event Allison changes Distributor's Area of Responsibility resulting in Dealer's Operations no longer being located in Distributor's Area of Responsibility, Dealer agrees to terminate this Agreement provided one of the following events occur:

- (a) An Allison Distributor offers to make Dealer an Service Dealer of such Distributor for a term of not less than the then unexpired term of this Agreement, or
- (b) Allison offers to make Dealer a Direct Dealer for a term of not less than the then unexpired term of this Agreement,

Business conditions may require instead that Allison convert Dealer to a Direct Dealer to better serve end users of Allison Products. In this event, Allison shall provide notice of its election to convert Dealer to a Direct Dealer in which case Dealer agrees to terminate this Agreement provided Allison offers to make Dealer a Direct Dealer for a term of not less than the then unexpired term of this Agreement.

ARTICLE 10. Breaches and Opportunity to Remedy

10.1 Certain Acts or Events

10.1.1 The following acts or events which are within the control of Dealer or originate from action taken by Dealer or its Principal Manager(s) or Principal Owner(s) are material breaches of this Agreement. If Distributor learns that any of the acts or events has occurred, it may notify Dealer in writing. If notified, Dealer will be given the opportunity to respond in writing within thirty days of receipt of the notice,

explaining or correcting the situation to Distributor's satisfaction.

- (a) The removal, resignation, withdrawal or elimination from Dealer, for any reason, of any Principal Manager or Principal Owner without the prior written approval of Distributor.
- (b) Any attempted or actual sale, transfer or assignment by Dealer of this Agreement or any of the rights granted Dealer hereunder, or any attempted or actual transfer, assignment or delegation by Dealer of any of the responsibilities assumed by it under this Agreement contrary to the terms of this Agreement.
- (c) Any change, whether voluntary or involuntary, in the record or beneficial ownership of Dealer held by the Principal Owners as set forth in the current Ownership and Active Management Addendum without the prior written approval of Distributor where such approval is required under this Agreement.
- (d) Any undertaking by Dealer or any of its Principal Owner(s) or Principal Manager(s) to conduct, either directly or indirectly, any of the Dealer Operations at any unapproved location.
- (e) Any sale or other transfer, by operation of law or otherwise, or any relinquishment or discontinuance of use by Dealer, of the approved location of its Dealer Operations or other principal assets required or used in the conduct of the Dealer Operations, without the prior written approval of Distributor.
- (f) Any dispute among the owners or management personnel of Dealer which, in the opinion of Distributor, may adversely affect the Dealer Operations or the interests of Distributor, Dealer or Allison.
- (g) A finding by a government agency or court of original jurisdiction or a settlement arising from charges that Dealer or a predecessor of Dealer owned or controlled by the same person, had committed a misdemeanor or unfair or deceptive business practice which, in Distributor's opinion, may adversely affect the reputation or interests of Distributor, Dealer or Allison.
- (h) Willful failure of Dealer to comply with the provisions of any laws or regulations relating to the sale or service of Products and Parts.
- (i) Submission by Dealer of false applications or claims for any payment, credit, discount or allowance whether or not Dealer offers or makes restitution.
- (j) Failure of Dealer to timely pay its obligations to Distributor.
- (k) Any other material breach of Dealer's obligations under this Agreement not otherwise identified in this Article 10 or in Article 11.

10.1.2 If Dealer's response to Distributor's notification under Article 10.1.1 demonstrates that the breach has been corrected, or otherwise explains the circumstances to Distributor's satisfaction, then Distributor shall confirm this fact in writing to Dealer. If, however, Dealer's response does not demonstrate that the breach has been corrected or explain the circumstances to Distributor's satisfaction, termination is warranted and Distributor may terminate this Agreement upon written notice to Dealer. Termination will be effective sixty days following Dealer's receipt of the notice.

10.2 Failure of Performance by Dealer

If Distributor determines that the Dealer's place of business is not acceptable, or that Dealer has failed to adequately perform its sales or service responsibilities, including training requirements and customer satisfaction, Distributor will review such failure with Dealer.

As soon as practicable thereafter, Distributor will notify Dealer in writing of the nature of Dealer's failure and of the period of time (which shall not be less than six months) during which Dealer will have the opportunity to correct the failure.

If Dealer does correct the failure by the expiration of the period, Distributor will so advise the Dealer in writing. If, however, Dealer does not correct failure by the expiration of the period, Distributor may terminate this Agreement by giving Dealer ninety days advance written notice.

ARTICLE 11. Termination of Agreement

11.1 Termination Due to Termination of Distributor's Agreement with Allison

In the event and at the time the Distributor Agreement between Allison and Distributor is terminated for any reason or expires, this Agreement shall automatically terminate.

11.2 Termination in Accordance with Article 9.

This Agreement shall terminate if the requirements of Article 9 are met.

11.3 By Dealer

Dealer has the right to terminate this Agreement without cause at any time upon written notice to Distributor. Termination will be effective thirty days after Distributor's receipt of the notice, unless otherwise mutually agreed in writing.

11.4 By Agreement

This Agreement may be terminated at any time by written agreement between Distributor and Dealer.

11.5 Failure to be Licensed

If Distributor or Dealer fails to secure or maintain any license required for the performance of obligations under this Agreement or such license is suspended or revoked, either party may immediately terminate this Agreement by giving the other party written notice.

11.6 Acts or Events

If Distributor learns that any of the following has occurred, it may terminate this Agreement by giving Dealer written notice of termination. Termination will be effective on the date specified in the notice.

- (a) Discontinuance of the business relationship between Dealer and Dealer's OEM(s) as identified in Paragraph FIRST of this Agreement for any reason.
- (b) Conviction in a court of original jurisdiction of Dealer, or a predecessor of Dealer owned or controlled by the same person, or any Principal Manager or Principal Owner of any felony.
- (c) Insolvency of Dealer, or filing by or against Dealer of a petition in bankruptcy; or filing of a proceeding for the appointment of a receiver or trustee for Dealer, provided such filing or appointment is not dismissed or vacated within thirty days; or execution by Dealer of an assignment for the benefit of creditors or any foreclosure or other due process of law whereby a third party acquires rights to the operation, ownership or assets of Dealer.
- (d) Failure of Dealer to conduct customary sales and service operations during customary business hours for seven consecutive business days.
- (e) Any misrepresentation to Allison or Distributor by Dealer or by any Principal Manager or Principal Owner in applying for this Agreement, or in identifying the Principal Manager(s) or record or beneficial ownership of Dealer.
- (f) Submission by Dealer of false applications or claims for any payment, credit, discount or allowance, including false applications in connection with incentive activities, where the false information was submitted to generate a payment to Dealer for a claim which would not otherwise have qualified for payment.
- (g) Refusal by Dealer to permit any representative of Distributor or Allison to make any examination or audit of Dealer's accounts and records, provided such failure or refusal occurs after receipt by Dealer of a written request for such permission.

11.7 Reliance on Any Applicable Termination Provision

The terminating party may select the provisions under which it elects to terminate without reference to any other provision that may also be applicable. The terminating party subsequently also may assert other grounds for termination.

11.8 Transactions After Termination

11.8.1 Effect on Orders

If Dealer and Distributor do not enter into a new Dealer Agreement when this Agreement expires or is terminated,

all of Dealer's outstanding orders for Parts will be automatically cancelled.

Expiration or termination of this Agreement will not release Dealer or Distributor from the obligation to pay any amounts owing the other, or which may become due.

11.8.2 Effect of Transactions After Termination

Neither Distributor's sales of Parts to Dealer nor any other action by Dealer or Distributor after termination of this Agreement will be construed as a waiver of the termination.

11.9 Distributor's Right to Purchase When Agreement is Terminated

11.9.1 Right to Purchase

In the event this Agreement either is terminated under any of the provisions of Articles 10 or 11, except for termination under Article 11.2 or expires according to its terms and Distributor does not offer Dealer a new agreement upon such expiration, and upon compliance with the provisions hereinafter set forth, Distributor shall purchase from Dealer and Dealer shall sell to Distributor:

- (a) Unused and undamaged Parts ("Eligible Items") that (1) are still in the original, resalable merchandising packages and in unbroken lots; (2) are listed in the current parts price schedules (except Parts listed as obsolete); and (3) were purchased directly from Distributor, or from a Service Dealer as part of Dealer's initial Parts inventory unless the parties agreed that this Article 11.9.1 (a) would not apply.

The prices for such Eligible Items shall be the Distributor Net Prices listed in the current parts price schedules in effect on the effective date of termination plus reimbursement for transportation charges prepaid by Dealer to the destination specified by Distributor.

- (b) Any signs owned by Dealer of a type recommended in writing by Distributor and bearing Marks at a price based on the fair market value of the signs, as mutually agreed upon by Distributor and Dealer. If Distributor and Dealer cannot agree on a price, they shall select a third party who shall set the price.

11.9.2 Responsibilities of Dealer

Distributor obligations under this Article are subject to Dealer fulfilling its obligations under this Agreement.

Dealer shall mail or deliver to Distributor, within thirty days following the effective date of the termination or expiration, separate lists designating the Eligible Items to be purchased by Distributor under Article 11.9. Distributor, within fifteen days after receipt of such lists, will furnish Dealer with disposition instructions. Dealer shall comply

with Distributor's disposition instructions within thirty days after receipt of such instructions.

Dealer shall take such action and execute and deliver such instruments as may be necessary to (a) convey to Distributor good and marketable title to all Eligible Items to be purchased; (b) comply with the requirements of any applicable law relating to bulk sales or transfers; and (c) satisfy and discharge any liens or encumbrances on Eligible Items prior to their delivery to Distributor.

11.9.3 Payment by Distributor

Distributor shall pay Dealer for the Eligible Items as soon as practicable following delivery to the specified destination. Payment may be made directly to anyone having a security or ownership interest in such Eligible Items.

Distributor may deduct from the purchase price of the Eligible Items any indebtedness of Dealer to Distributor.

ARTICLE 12. General Provisions

12.1 No Agent or Legal Representative

This Agreement does not make Dealer the agent or legal representative of Distributor or Allison for any purpose whatsoever. Dealer is not granted authority to assume or to create any obligation on behalf of or in the name of Distributor or Allison. Neither Dealer nor Distributor owes the other any fiduciary obligation.

12.2 Dealer's Responsibility For Its Operations

Except as provided in this Agreement, Distributor and Allison have no liability in connection with the establishment or conduct of the Dealer Operations, and Dealer shall be solely responsible for all expenditures, liabilities and obligations incurred or assumed by Dealer in connection with Dealer's responsibilities under this Agreement.

12.3 Taxes

Dealer is responsible for all local, state or provincial, federal or other applicable taxes and tax returns related to its Dealer Operations and shall hold Distributor and Allison harmless from any claims or demands made by any taxing authority with respect thereto.

12.4 Trademarks and Service Marks

12.4.1 Ownership

Dealer acknowledges that Allison Transmission, Inc., or an Affiliated Company, is the exclusive owner of the various trademarks, service marks, names and designs used in connection with Products and Parts ("Marks").

12.4.2 Display and Use of Marks

Dealer is granted the non-exclusive right to display such Marks in accordance with the Identity Guide published by Allison in the conduct of sales and service operations relating to Products and Parts. Dealer will discontinue the display or use of any such Mark or change the manner in

which any such Mark is displayed or used when requested to do so by Allison. Dealer will not use any Mark as part of the name under which the business of Dealer, or any company affiliated with Dealer, is conducted without the prior written approval of Allison. Any such approval by Allison will be automatically rescinded upon the expiration or termination of this Agreement.

During the term of this Agreement, Dealer will not use any mark or name so resembling such Marks as to be likely to confuse or deceive.

Dealer shall not remove or alter Marks or other identifications used on or in connection with any Product or add any Marks or other identification without Allison's prior approval.

12.4.3 Discontinuance of Use Upon Termination

Upon the expiration or termination of this Agreement, Dealer shall immediately discontinue, at Dealer's expense, all use and display of Marks. Thereafter, Dealer will not use either directly or indirectly, any Marks or any other marks so resembling such Marks as to be likely to confuse or deceive. Failure of Distributor and Dealer to complete the purchase and sale of signs under the provisions of Article 11.9 of this Agreement will not relieve Dealer of its obligation to discontinue the use of such Marks on such signs.

12.4.4 Not to be Registered by Dealer

Dealer will not take any action, directly or indirectly, to register or cause to be registered any Marks in its favor or in the favor of any third party.

12.4.5 Liability for Failure to Discontinue Use

Dealer will reimburse Distributor, and Allison Transmission Inc. or its Affiliated Companies, for all costs, legal fees and other expenses incurred by any of them in connection with legal action to require Dealer to comply with this Article 12.4

12.5 Export Compliance

Dealer shall be required to obtain any import authorizations required by the country of importation other than the United States and shall be required to cooperate and work with Distributor and Allison to obtain any approvals required by the United States Government including approval for the re-transfer or re-export of any Parts from the original country of exportation to any third party or third country. In addition, to the extent permissible under applicable law, Dealer shall comply with any restrictions imposed by Distributor or Allison, which appear on the shipping documents that accompany Parts.

12.6 Notices

Any notice required to be given by either party to the other in connection with this Agreement shall be in writing and delivered personally or by first class or express mail or by facsimile. Notices to Dealer shall be directed to Dealer, or its representatives at Dealer's place of business; notices to Distributor shall be directed to Distributor, or its representatives, at Distributor's principal place of business.

12.7 No Implied Waivers

The failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter. The waiver by either party of a breach of any provision hereof shall not constitute a waiver of any succeeding breach of the same or any other provision nor constitute a waiver of the provision itself.

12.8 Assignment of Rights

Except as otherwise provided in this Agreement, neither this Agreement nor the rights or obligations of Dealer may be sold, assigned, delegated or otherwise transferred, without Distributor's written approval.

Distributor may assign this Agreement and any rights, or delegate any obligations under this Agreement to any successor company and will provide Dealer written notice of such assignment or delegation.

12.9 Applicable Law

The validity of this Agreement, the construction and enforcement of its terms and the interpretation of the rights and duties of Dealer and Distributor will be governed by the laws of the state or province in which the Distributor's principal place of business is located. However, if performance under this Agreement is illegal under a valid law of any jurisdiction where such performance is to take place, the performance will be modified to the minimum extent necessary to comply with such law if it was effective on the date of execution of this Agreement.

12.10 Sole Agreement of Parties

Except as otherwise provided or referred to herein, Distributor has made no promises to Dealer or any Principal Manager or Principal Owner and there are no other agreements or understandings, either oral or in writing, between the parties affecting this Agreement or relating to any of the subject matters covered by this Agreement.

Except as otherwise provided herein, this Agreement cancels and supersedes all previous agreements between the parties that relate to any matters covered herein.

No agreement between Distributor and Dealer which relates to matters covered herein, and no change, addition to (except the filling in of blank lines) or erasure of any printed portion of this Agreement, will be binding unless it is approved in writing in accordance with Paragraph TENTH of this Agreement.

12.11 New and Superseding Agreements

In the event a new and superseding form of dealer agreement is offered by Distributor to its Service Dealers, generally at any time prior to the expiration of the term of this Agreement, Distributor may terminate this Agreement by prior written notice to Dealer, provided Distributor offers Dealer a new agreement in the new and superseding form for a term of not less than the then unexpired term of this Agreement.

Unless otherwise agreed in writing, the rights and obligations of Dealer that may become applicable upon any termination or expiration of this Agreement shall not be

applicable in the event of execution by Distributor and Dealer of any new and superseding agreement. The matured rights and obligations of the parties hereunder shall continue under the new agreement.

Dealer's performance under any prior agreements may be considered in an evaluation of Dealer's performance under this Agreement or any succeeding agreement.

12.12 Captions

The captions in this Agreement are for convenience of reference only and shall not otherwise affect the meaning hereof.

GLOSSARY

Where used in the OEM Dealer Agreement and in related documents, the following terms shall have the meanings indicated:

1. Affiliated Company

Any company in which Allison Transmission, Inc. has a direct or indirect ownership interest.

2. Agreement

The Allison Transmission OEM Dealer Agreement that is executed by Dealer and Distributor including the Standard Provisions, Glossary, all related Addenda, the Service Policy Manual, the Service Standards Manual and the Terms of Sale Bulletins.

3. Allison Distributor

A business entity which is a party to a Distributor Agreement with Allison.

4. Dealer Operations

The functions, responsibilities, operations and activities that are contemplated by this Agreement undertaken by Dealer in connection with Products and Parts.

5. Direct Dealer

A business entity with which Allison has executed a dealer agreement for any or all of the Products and/or Parts.

6. Identity Guide

Guidelines published by Allison for the proper use and display of Allison owned trademarks, service marks and other registered marks.

7. Maintenance Dealer Operations

Sales and sales promotions of Parts and minor service performed on easily accessible components and parts on Products as described in the Service Policy Manual.

8. Marks

The various trademarks, service marks, names and designs owned by Allison Transmission, Inc. or an Affiliated Company and used in connection with Products and Parts.

9. Nationally Recognized Original Equipment Manufacturer

An original equipment manufacturer of vehicles or equipment which utilizes or incorporates Products and is identified and acknowledged by Allison as having a national sales and service organization.

10. OEM

An original equipment manufacturer of vehicles or equipment which utilize or incorporate Products.

11. OEM Dealer

A Service Dealer which holds a dealer agreement with a Nationally Recognized Original Equipment Manufacturer.

12. Overhaul Dealer Operations

Maintenance Dealer Operations as well as major repair or overhaul work performed on all components and parts of Products as described in the Service Policy Manual.

13. Parts

(a) New parts that have been manufactured, marketed, or authorized by Allison, (b) used parts that have been manufactured, marketed, or authorized by Allison and are reclaimed by Allison authorized outlets using approved reclamation procedures as described in Allison publications, or (c) exchange products marketed, authorized by Allison or remanufactured to Allison specifications by Allison or entities approved by Allison.

14. Primary Market Area

The area described in Article 3.1 of the Standard Provisions of this Agreement.

15. Principal Manager(s)

The individual manager(s) of Dealer identified in the Ownership and Active Management Addendum upon whose personal service Distributor relies in entering into this Agreement.

16. Principal Owner(s)

Owner(s) of Dealer upon whose stated record and beneficial ownership interests in Dealer, as set forth in the Ownership and Active Management Addendum, Distributor relies in entering into this Agreement.

17. Products

All new series and models of Allison transmissions identified in the Paragraph FIRST of this Agreement and which are or have been marketed by or for Allison or its predecessor.

18. Service Dealer

A business entity with which Distributor has executed an Allison Dealer Agreement.

19. Service Policy Manual

The manual prepared by Allison and furnished by Distributor to Dealer (as modified from time to time by Allison in writing) setting forth the policies and procedures that Distributor and Dealer are required to observe in the servicing of Products.

20. Service Standards Manual

The manual issued by Allison periodically and as modified from time to time which details certain minimum requirements for service personnel and service facilities.